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FILED

APR 19 2010

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
et al.,

Petitioners,

Docket No. 2009-019
Cause No. C/025/0005

DIVISION OF OIL, GAS AND MINING,

Respondent, and

ALTON COAL DEVELOPMENT, LLC, and
KANE COUNTY, UTAH,

Intervenors-Respondents.

PETITIONERS' NOTICE OF ISSUES TO BE HEARD

Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah Wilderness Alliance ("SUWA"), Natural Resources Defense Council ("NRDC"), and National Park Conservation Association ("NPCA")(collectively, "Petitioners") respectfully notify the Board and other parties

to this hearing that Petitioners intend to present for decision only the issues listed below. Conversely, Petitioners do not intend to prosecute, and hereby waive the right to present evidence concerning, any other issues identified in Petitioners' prior pleadings. The issues that Petitioners intend to present for at the Board's April 29-30, 2010, hearing are:

1. Whether the Division's determination of eligibility and effect related to cultural and historic resources covered the entire permit area approved for the Coal Hollow Mine.
2. Whether the Division's determination of eligibility and effect related to cultural and historic resources covered any area outside the permit area approved for the Coal Hollow Mine.
3. Whether the Division considered a mitigation plan for any cultural or historic resources located wholly outside of the permit area.
4. Whether the Division was required to identify and address the effect of the proposed Coal Hollow Mine on the Panguitch National Historic District before approving the mine permit.
5. Whether the Division determined that the Fugitive Dust Control Plan for the Coal Hollow Mine met the requirements of the Division's regulations prior to approving the mine permit.
6. Whether the Division of Air Quality provided the Division of Oil, Gas and Mining an evaluation of the effectiveness of the Fugitive Dust Control Plan for the Coal Hollow Mine prior to the Division's approval of the mine permit.
7. Whether the Division of Air Quality has provided notice to the Division of Oil, Gas and Mining of receipt of a complete air permit application from ACD for the Coal Hollow Mine.
8. Whether the Division of Air Quality has provided notice to the Division of Oil, Gas and Mining of approval of an air permit for the Coal Hollow Mine.
9. Whether the Division was required to wait for the Division of Air Quality's evaluation of the Fugitive Dust Control Plan including the plan's effectiveness in addressing the quality of the night skies before approving the Coal Hollow mine permit.
10. Whether the Division's cumulative hydrologic impact assessment for the Coal Hollow mine unlawfully fails to establish at least one material damage criterion for each water quantity or quality characteristic that the Division requires ACD to monitor during the operations and reclamation periods.
11. Whether the Division's cumulative hydrologic impact assessment for the Coal Hollow mine unlawfully fails to designate the applicable Utah water quality standard for total

dissolved solids (a maximum concentration of 1,200 milligrams per liter) as the material damage criterion for surface water outside the permit area.

12. Whether ACD's hydrologic monitoring plans are unlawfully incomplete because they fail to describe how the monitoring data that ACD will collect may be used to determine the impacts of the Coal Hollow mine upon the hydrologic balance.

13. Whether ACD's hydrologic operating plan is unlawfully incomplete because it fails to include remedial measures that ACD proposes to take if monitoring data show trends toward one or more material damage criteria.

The issues that Petitioners intend to present for at the Board's May 21-22, 2010, hearing are:

14. Whether ACD's geologic information is unlawfully incomplete because ACD failed to drill deeply enough to identify the first aquifer below the Smirl coal seam that may be adversely impacted by mining.

15. Whether ACD's hydrologic monitoring plans are unlawfully incomplete because they fail to establish monitoring stations:

- (a) for surface water on Lower Robinson Creek immediately upgradient of the permit area; and
- (b) for both surface and alluvial ground water in or adjacent to Lower Robinson Creek, immediately downgradient of the most downgradient discharge point from the seeps or springs that ACD and the Division have observed between monitoring points SW-101 and SW-5.

16. Whether ACD's baseline hydrologic data are unlawfully incomplete in one or more of the following respects:

- (a) the data do not include even one flow rate or water quality entry during the data collection period at monitoring stations that ACD should have established on Lower Robinson Creek immediately upgradient of the permit area, and thus the data do not demonstrate seasonal variation at that location;
- (b) the data do not include even one flow rate or water quality entry during the data collection period at a monitoring station that ACD should have established on Lower Robinson Creek immediately downgradient of the most downgradient discharge point from the seeps or springs that ACD and the Division have observed between monitoring points SW-101 and SW-5, and thus the data do not demonstrate seasonal variation at that location; and

- (c) none of the water quality data are verified by complete laboratory reports that establish an appropriate chain of custody and identify the sampling protocols that governed collection of each water sample.

17. Whether the Division's determination that Sink Valley does not contain an alluvial valley floor is arbitrary, capricious, or otherwise inconsistent with applicable law.

WHEREFORE, Petitioners request that the Board

Dated: April 19, 2010

Respectfully submitted,


By:

**Stephen
Bloch**

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2010, I served a true and correct copy of **PETITIONERS' NOTICE OF ISSUES TO BE HEARD** to each of the following persons via e-mail transmission:

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